

AMENDED IN SENATE JULY 1, 2008
AMENDED IN ASSEMBLY MAY 19, 2008
AMENDED IN ASSEMBLY MARCH 24, 2008
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2939

**Introduced by Assembly Member Hancock
(Coauthors: Assembly Members Laird and Lieu)**

February 22, 2008

An act to amend Sections 17958.5, 17958.7, and 18941.5 of, ~~and to add Section 17958.6 to,~~ the Health and Safety Code, relating to building standards.

LEGISLATIVE COUNSEL'S DIGEST

AB 2939, as amended, Hancock. Building standards: green buildings: local variances.

The California Building Standards Law provides for the adoption of building standards by state agencies by requiring all state agencies that adopt or propose adoption of any building standard to submit the building standard to the California Building Standards Commission for approval or adoption.

Existing law requires the Department of Housing and Community Development to propose the adoption, amendment, or repeal of building standards to the commission relating to hotels, motels, lodging houses, apartment houses, and dwellings, and the buildings and structures accessory thereto, except as specified.

Existing law authorizes a city or county to make changes or modifications in the building standards proposed by the department and approved by the commission, to provide for local variances relating to

local climatic, geological, or topographical conditions, upon making certain findings and filing those findings with the commission.

This bill would specifically authorize a city, county, or city and county to make changes or modifications in the building standards proposed by the department and approved by the commission, to permit the city, county, or city and county to implement ~~specified green building guidelines and scoring systems~~ *one or more green building standards, guidelines, and rating systems, as defined*, if the change or modification does not permit use of a building standard that is less stringent than those otherwise permitted under existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and hereby declares all of
2 the following:

3 (a) The design, construction, and maintenance of buildings and
4 structures within the state can have a significant impact on the
5 state's environmental sustainability, *greenhouse gas emissions*,
6 resource usage and efficiency, and waste management, and the
7 health and productivity of the state's residents, workers, and
8 visitors.

9 ~~(b) Green building design, construction, and operation can have~~
10 ~~a significant positive effect on energy and resource efficiency and~~
11 ~~waste and pollution generation, and the health and productivity of~~
12 ~~a building's occupants over the life of the building.~~

13 (b) *Green building is a whole-systems approach to the design,*
14 *construction, and operation of buildings, from the early stages of*
15 *development to the final finishes to the day-to-day operations and*
16 *maintenance of the building. Green building includes the following*
17 *five principles: planning for livable communities, energy efficiency,*
18 *indoor environmental quality and health, natural resource*
19 *conservation, and water conservation.*

20 (c) Green building benefits are spread throughout the systems
21 and features of the building. Green building goes beyond energy
22 efficiency measures to include, among other things, using certified
23 sustainable wood products; aggressive use of high recycled content
24 products; installation of recyclable carpet, high efficiency lights,
25 and chlorofluorocarbon-free air-conditioning equipment; separation

1 and recycling of building material waste that occurs during
2 deconstruction, demolition, and construction; enhancement of
3 indoor air quality by selection and use of construction materials
4 that do not have chemical emissions that are toxic or irritating to
5 building occupants; modification of heating, ventilation, and
6 air-conditioning systems to provide high-quality indoor air;
7 selection of construction materials made of substantial recycled
8 content; installation of high performance solar control glazing; use
9 of recycled water in interior and exterior plumbing and for
10 landscaping purposes; and the use of alternative energy methods
11 for supplemental energy production. *efficiency measures to include,*
12 *among other things, sites and designs that make it easier for people*
13 *to drive less, durable and low-maintenance materials, passive*
14 *solar design, high efficiency heating and cooling equipment,*
15 *upgraded insulation, materials with reduced formaldehyde and*
16 *low-volatile or nonvolatile organic compounds, reuse and recycling*
17 *of construction and demolition debris, recycled content products,*
18 *low-water landscaping and high efficiency irrigation, and high*
19 *efficiency appliances and fixtures.*

20 (d) In recent years, green building design, construction, and
21 operations techniques and practices have become increasingly
22 widespread. Many homeowners, businesses, and building
23 professionals have voluntarily sought to incorporate green building
24 techniques and practices into their projects. A number of local and
25 national systems have been developed to serve as guides to green
26 building practices.

27 (e) Several provisions of the California Building Standards Code
28 state law are creating uncertainty regarding the ability of California
29 cities and counties in California to require the use of proven and
30 effective green building techniques, even where those techniques
31 exceed all minimum California building standards. This uncertainty
32 is preventing the cities and counties that wish to do so from fully
33 realizing the economic and environmental benefits of mandating
34 green building techniques. *minimum California building standards.*
35 *Specifically, the California Building Standards Law generally*
36 *preempts cities and counties from setting building standards*
37 *different from those set forth in the California Building Standards*
38 *Code, except when the city or county determines that modifications*
39 *are “reasonably necessary because of local climatic, geological,*
40 *or topographical conditions.” The resultant uncertainty is*

1 *preventing the cities and counties that wish to do so from fully*
2 *realizing the economic and environmental benefits of mandating*
3 *green building measures, even though those measures provide one*
4 *of the most effective means for local governments to meet*
5 *greenhouse gas emissions reduction and other important*
6 *environmental objectives. While the California Building Standards*
7 *Commission is developing green building standards that will be*
8 *adopted as code, many local governments have begun to go beyond*
9 *voluntary measures and mandate more comprehensive green*
10 *building programs as a strategy to address climate change, and*
11 *those local governments should have a mechanism to do so without*
12 *the current uncertainty and potential legal threat.*

13 (f) To permit the people of the State of California to realize the
14 benefits of green building, it is necessary to amend the California
15 Building Standards Code to clarify that ~~cities, counties, or city and~~
16 ~~counties~~ *a city, county, or city and county* may mandate the use
17 of appropriate green building ~~techniques~~ *measures*.

18 SEC. 2. Section 17958.5 of the Health and Safety Code is
19 amended to read:

20 17958.5. (a) Except as provided in Section 17922.6, in
21 adopting the ordinances or regulations pursuant to Section 17958,
22 a city, county, or city and county may make those changes or
23 modifications in the requirements contained in the provisions
24 published in the California Building Standards Code and the other
25 regulations adopted pursuant to Section 17922 that ~~the city, county,~~
26 ~~or city and county determines;~~ *it determines*, pursuant to the
27 provisions of Section 17958.7, are reasonably necessary to do ~~any~~
28 *either* of the following:

29 (1) Address local climatic, geological, or topographical
30 conditions.

31 (2) Permit the city, county, or city and county to implement one
32 ~~or more of the green building guidelines and scoring systems~~
33 ~~identified in Section 17958.6 if the change or modification does~~
34 ~~not permit use of a building standard that is less stringent than~~
35 ~~those otherwise permitted under this part.~~ *or more green building*
36 *standards, guidelines, and rating systems, if the change or*
37 *modification does not permit the use of a building standard that*
38 *is less stringent than those otherwise permitted under this part.*
39 *For the purposes of this subdivision, a city and county may make*
40 *reasonably necessary modifications, on the basis of local*

1 *conditions, to the requirements adopted pursuant to Section 17922*
2 *and contained in the California Building Standards Code and*
3 *related regulations.*

4 (b) For the purposes of this part, “green building” shall mean a
5 structure that uses a holistic approach or life cycle analysis
6 approach for design, construction, and demolition that minimizes
7 the building’s impact on the environment, the occupants, and the
8 community, and that includes measures to reduce impacts,
9 including, but not limited to, site planning, energy efficiency, water
10 ~~efficiency~~ conservation, materials and resource efficiency, indoor
11 air quality, and environmental quality.

12 (c) *For the purposes of this part, “green building standards,*
13 *guidelines, and rating systems” shall mean a publicly available*
14 *system that is developed by a third-party and provides a mechanism*
15 *for evaluating and determining whether, and to what extent, a*
16 *structure qualifies as a green building.*

17 (d) *Any ordinance or regulation adopted by a city, county, or*
18 *city and county to implement one or more green building standards,*
19 *guidelines, and rating systems shall include a procedure by which*
20 *that city, county, or city and county shall review any subsequent*
21 *changes to that system before those changes can take effect within*
22 *the city, county, or city and county.*

23 (e) *A city, county, or city and county that has adopted an*
24 *ordinance or regulation to implement one or more green building*
25 *standards, guidelines, and rating systems prior to January 1, 2009,*
26 *without making the required findings pursuant to subdivision (a)*
27 *of Section 17958.7, shall be deemed to have complied with this*
28 *section, and Sections 17958.7 and 18941.5, for the purposes of*
29 *that ordinance or regulation, if the city, county, or city and county*
30 *makes and files the required finding pursuant to subdivision (a)*
31 *of Section 17958.7 on or before January 1, 2010.*

32 (e)

33 (f) ~~Nothing in this section or in Section 17958.6, 17958.7,~~
34 ~~17958.7 or 18941.5 shall limit or alter the requirements of~~
35 ~~subdivision (h) of Section 25402.1 of the Public Resources Code~~
36 ~~regarding city or county conservation or energy installation~~
37 ~~insulation standards.~~

38 ~~SEC. 3. Section 17958.6 is added to the Health and Safety~~
39 ~~Code, to read:~~

1 ~~17958.6. (a) A city, county, or city and county that adopts~~
2 ~~ordinances or regulations making changes or modifications in the~~
3 ~~California Building Standards Code to implement green building~~
4 ~~guidelines and scoring systems pursuant to Section 17958.5 shall~~
5 ~~require the use of one of the following rating systems, or any other~~
6 ~~system approved for this purpose by the California Building~~
7 ~~Standards Commission:~~

8 ~~(1) The GreenPoint Rated system of the Build it Green~~
9 ~~organization.~~

10 ~~(2) The California Green Builder Program of the California~~
11 ~~Building Industry Association.~~

12 ~~(3) The Leadership in Energy and Environmental Design system~~
13 ~~of the United States Green Building Council.~~

14 ~~(4) The Green Globes system for new buildings of the Green~~
15 ~~Building Initiative.~~

16 ~~(b) The California Building Standards Commission may assess~~
17 ~~an application review and processing fee for any rating system~~
18 ~~application submitted to the commission for approval. The fee~~
19 ~~charged shall not exceed the cost of reviewing and processing the~~
20 ~~application.~~

21 ~~(c) Any ordinance or regulation adopted by a city, county, or~~
22 ~~city and county to implement one of the green building guidelines~~
23 ~~and scoring systems identified in subdivision (a) shall include a~~
24 ~~procedure by which that city, county, or city and county shall~~
25 ~~review any subsequent changes to that system before those changes~~
26 ~~can take effect within the city, county, or city and county.~~

27 ~~(d) A city, county, or city and county that has adopted an~~
28 ~~ordinance or regulation to implement one or more of the green~~
29 ~~building guidelines or scoring systems set forth in this section prior~~
30 ~~to January 1, 2009, without making the required findings pursuant~~
31 ~~to subdivision (a) of Section 17958.7, shall be deemed to have~~
32 ~~complied with this section and Sections 17958.5, 17958.7, and~~
33 ~~18941.5 for the purposes of that ordinance or regulation so long~~
34 ~~as the city, county, or city and county makes and files the required~~
35 ~~finding pursuant to subdivision (a) of Section 17958.7 on or before~~
36 ~~January 1, 2010.~~

37 ~~SEC. 4.~~

38 ~~SEC. 3. Section 17958.7 of the Health and Safety Code is~~
39 ~~amended to read:~~

1 17958.7. (a) Except as provided in Section 17922.6, the
2 governing body of a city, county, or city and county, before making
3 any modifications or changes pursuant to Section 17958.5, shall
4 make an express finding that the modifications or changes are
5 reasonably necessary because of local climatic, geological, or
6 topographical conditions, or to permit the city, county, or city and
7 county to implement one or more of the green building guidelines
8 ~~and scoring systems identified in Section 17958.6. The green~~
9 *building standards, guidelines, and rating systems. The finding*
10 *shall be available as a public record. A copy of those findings,*
11 *together with the modification or change expressly marked and*
12 *identified so as to correlate with the relevant findings, shall be*
13 *filed with the California Building Standards Commission. If the*
14 *modification or change consists of the adoption of one or more*
15 *green building standards, guidelines, and rating systems, this*
16 *requirement shall be satisfied by filing a copy of the findings that*
17 *expressly identifies the green building guidelines and rating*
18 *systems. No modification or change shall become effective or*
19 *operative for any purpose until the finding and the modification*
20 *or change have been filed with the California Building Standards*
21 *Commission.*

22 (b) The California Building Standards Commission may reject
23 a modification or change filed by the governing body of a city,
24 county, or city and county if no finding was submitted.

25 ~~SEC. 5.~~

26 *SEC. 4.* Section 18941.5 of the Health and Safety Code is
27 amended to read:

28 18941.5. (a) (1) Amendments, additions, and deletions to the
29 California Building Standards Code adopted by a city, county, or
30 city and county pursuant to this section or pursuant to Section
31 17958.7, together with all applicable portions of the California
32 Building Standards Code, shall become effective 180 days after
33 publication of the California Building Standards Code by the
34 commission, or at a later date after publication established by the
35 commission.

36 (2) The publication date established by the commission shall
37 be no earlier than the date the California Building Standards Code
38 is available for purchase by the public.

39 (b) Neither the State Building Standards Law contained in this
40 part, nor the application of building standards contained in this

1 section, shall limit the authority of a city, county, or city and county
2 to establish more restrictive building standards reasonably
3 ~~necessary because of local climatic, geological, or topographical~~
4 ~~conditions, or to permit the city, county, or city and county to~~
5 ~~implement the green building guidelines and scoring system~~
6 ~~established by one of the rating systems identified in Section~~
7 ~~17958.6. The governing body shall make the finding necessary~~
8 ~~because of local climatic, geological, or topographical conditions,~~
9 ~~or to permit a city, county, or city and county to implement one or~~
10 ~~more green building standards, guidelines, and rating systems.~~
11 *The governing body shall make the finding* required by Section
12 17958.7 and the other requirements imposed by Section 17958.7
13 shall apply to that finding. Nothing in this section shall limit the
14 authority of fire protection districts pursuant to subdivision (a) of
15 Section 13869.7. Further, nothing in this section shall require
16 findings required by Section 17958.7 beyond those currently
17 required for more restrictive building standards related to housing.